

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

IN RE: TOLL ROADS LITIGATION

Case No: 8:16-cv-00262-ODW(ADSx)

Hon. Otis D. Wright II

PENNY DAVIDI BORSUK; DAVID
COULTER; EBRAHIM E. MAHDA;
TODD QUARLES; TODD
CARPENTER; LORI MYERS; DAN
GOLKA; and JAMES WATKINS on
behalf of themselves and all others
similarly situated,

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Plaintiffs,

vs.

Date: April 23, 2021

Time: 11:00 a.m.

Location: Judicate West

55 Park Plaza, Suite 400

Irvine, CA 92614

FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR
AGENCY; SAN JOAQUIN HILLS
TRANSPORTATION CORRIDOR
AGENCY; ORANGE COUNTY
TRANSPORTATION AUTHORITY;
3M COMPANY; BRiC-TPS LLC;
RHONDA REARDON; MICHAEL
KRAMAN; CRAIG YOUNG; SCOTT
SCHOEFFEL; ROSS CHUN;
DARRELL JOHNSON; LORI
DONCHAK; COFIROUTE USA, LLC;
and DOES 3-10; inclusive,

Special Master: Hon. Andrew J. Guilford (ret.)

Defendants.

ORDER GRANTING PRELIMINARY APPROVAL

On April 12, 2021, Plaintiff Dan Golka on behalf of himself and the proposed Settlement Class (“Plaintiff”) and Defendants Orange County Transportation Authority, Darrell Johnson and Lori Donchak (collectively “OCTA”), and Defendant Cofiroute USA, LLC (“Cofiroute”) (OCTA and Cofiroute are collectively referred to as “Defendants”) entered into a Settlement Agreement and Release (“Agreement”), after two arm’s-length mediations, both with the assistance of mediator Robert Kaplan¹ The settlement reached by Plaintiff and Defendants will be referred to as the “Settlement.”

Plaintiff now moves this Court, pursuant to Federal Rule of Civil Procedure (“Rule”) 23(e), for an order preliminarily approving the Settlement and directing notice of the proposed Settlement be given to the Settlement Class upon the terms and conditions set forth in the Agreement (“Motion”). The Motion was referred to the Special Master, Judge Andrew J. Guilford (ret.) (*see* ECF No. 582), and a hearing on the Motion occurred on April 23, 2021. Special Master Guilford issued a Report and Recommendation recommending granting the Motion for Preliminary Approval of the Settlement.

After carefully considering Plaintiff’s Motion for Preliminary Approval and accompanying declarations; the Agreement, including the accompanying Exhibits; Special Master Guilford’s Report and Recommendation; and the applicable law, the Court finds that:

1. The proposed Settlement is fair, reasonable, adequate and the Court will likely be able to approve it under Rule 23(e)(2) and enter judgment on it. The proposed Settlement does not improperly grant preferential treatment to any segment of the Settlement Class. The proposed Settlement is sufficient to warrant sending

¹ Unless otherwise defined, all terms used herein have the same meanings as set forth in the Agreement.

1 notice to the class members about the Settlement in the manner proposed by Plaintiff.
2 The procedures for establishing and administering the benefits provided by the
3 proposed Settlement and for notice to class members satisfy Rule 23 and due process.

4 2. The Court finds and determines that it will likely be able to certify the
5 Settlement Class for purposes of judgment on the proposed Settlement under Rule
6 23(b)(3) of the Federal Rules of Civil Procedure, because the Settlement Class is
7 similar to the privacy class previously certified by the Court (ECF Nos. 439 and 501)
8 as to Defendants, and the Court had therefore previously determined that: (a) members
9 of each subclass of the Settlement Class are so numerous that joinder of all members
10 would be impracticable, (b) there are questions of law and fact that are common within
11 each subclass of the Settlement Class, and those common questions of law and fact
12 predominate over any questions affecting any individual class member; (c) the claims
13 of the Plaintiff are typical of the claims of the Settlement Class; (d) a class action on
14 behalf of each subclass of the Settlement Class is superior to other available means of
15 adjudicating this dispute; and (e) Plaintiff and Class Counsel are adequate
16 representatives of the Settlement Class. Defendants retain all rights to assert that this
17 action should not be certified as a class action, other than for settlement purposes.

18 3. The Court has reviewed the class notices for the Settlement Class and
19 the methods for providing notice and has determined that these forms and methods of
20 notice constitute the best notice practicable under the circumstances; are reasonably
21 calculated to apprise Settlement Class members of the terms of the Settlement and of
22 their right to participate in it, object, or opt-out; are reasonable and constitute due,
23 adequate, and sufficient notice to all persons entitled to receive notice; and meet all
24 applicable requirements of Rule 23 and due process.

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1 **Accordingly, IT IS HEREBY ORDERED that:**

2 1. The Motion for Preliminary Approval is **GRANTED**. The Court
3 preliminarily approves the Settlement.

4 2. The Court hereby certifies, for settlement purposes only, a Settlement
5 Class consisting of the following individuals whose PII was provided by OCTA or
6 Cofiroute to an entity described below between June 29, 2015, and the Settlement
7 Class Period End Date (10 days after entry of this Order):

- 8 • Any person with a transponder account with a Non-Party Toll Agency whose
9 PII, including the date, time and location of a toll transaction, was sent by
10 Defendants to a Non-Party Toll Agency for purposes of collecting a toll incurred
11 on the 91 Express Lanes (the “Interoperability Subclass”);
- 12 • Any person whose license plate number was sent by Defendants to the
13 California Department of Motor Vehicles or out-of-state equivalent, directly or
14 through a subcontractor, in connection with more than one alleged toll violation
15 incurred on the 91 Express Lanes (the “DMV Subclass”);
- 16 • Any person whose PII was sent to a car rental company by Defendants in
17 connection with an alleged toll violation incurred on the 91 Express Lanes (the Car
18 Rental Subclass”); and
- 19 • Any person whose PII, other than the amount of tolls and penalties owed, the
20 violation number, or the violator’s account number, was sent by Defendants to a
21 third-party debt collector for collection of unpaid tolls and/or toll violation
22 penalties incurred on the 91 Express Lanes (the “Debt Collection Subclass”).

23 The following individuals are excluded from the Settlement Class: Current members
24 of the OCTA Board of Directors, OCTA’s Chief Executive Officer, the General
25 Manager of the 91 Express Lanes, OCTA’s 91 Express Lanes Project Manager III,
26 the attorneys representing OCTA or Cofiroute in this Litigation. and the judge to
27 whom this case is or was assigned, any member of the judge’s immediate family, and
28 any member of the judge’s staff.

1 3. Class Representative. The Court preliminarily finds and determines,
2 pursuant to Rule 23(a), that Plaintiff Dan Golka will fairly and adequately represent
3 the interests of the Settlement Class in enforcing their rights in the action and appoints
4 him as “Class Representative.” The Court preliminarily finds that he is similarly
5 situated to absent Settlement Class members and therefore typical of the Settlement
6 Class, and that he will be an adequate class representative.

7 4. Class Counsel. For purposes of the Settlement, the Court appoints Helen
8 I. Zeldes of Schonbrun Seplow Harris Hoffman & Zeldes, LLP, Blake J. Lindemann
9 of Lindemann Law, APC and Michael J. Flannery of Cuneo Gilbert & LaDuca, LLP
10 as Class Counsel to act on behalf of the Settlement Class and the Class Representative
11 with respect to the Settlement. The Court authorizes Class Counsel to enter into the
12 Settlement on behalf of the Class Representative and Settlement Class, and to bind
13 them all to the duties and obligations contained therein, subject to final approval by
14 the Court of the Settlement.

15 5. Administration. Epiq Class Action & Claims Solutions, Inc is appointed
16 as Class Administrator to administer the notice procedure and the processing of claims
17 for the Settlement Class, under the supervision of Class Counsel.

18 6. Class Notice. The form and content of the proposed Notice of Class
19 Action Settlement (“Long Form Notice”), the Email Notice, Mail Notice, and
20 Publication Notice are hereby approved. The Parties and Class Administrator may
21 amend the Class Notice documents as necessary to add dates, correct errors, and
22 improve the information provided to Settlement Class members consistent with the
23 guidance provided by the Special Master.

24 7. Foothill/Eastern Transportation Corridor Agency and San Joaquin Hills
25 Transportation Corridor Agency (collectively, “TCA”) are hereby ordered to provide
26 to the Class Administrator, in an electronically searchable and readable format, the
27 names, email addresses and, if necessary (i.e., if an email address is unavailable or if
28 the Class Administrator notifies TCA that an email was returned as undeliverable) the

1 last known mailing addresses of TCA FasTrak account holders who used their TCA
2 FasTrak account to pay for a toll on the Orange County portion of the 91 Express
3 Lanes between June 29, 2015, and the tenth (10th) day after the entry of this Order.
4 Defendants are hereby ordered to provide to the Class Administrator, in an
5 electronically searchable and readable format mutually acceptable to the Class
6 Administrator and Defendants, the following information, to the extent the
7 information is reasonably retrievable from Defendants' reasonably available and
8 searchable data bases as maintained by Cofiroute: the names and last known mailing
9 addresses of the members of the Debt Collection Subclass and whether the member is
10 eligible for penalty forgiveness pursuant to Section 12.02. The Court finds that the
11 provision of the foregoing information by OCTA, Cofiroute and/or TCA to the Class
12 Administrator is necessary so that reasonable notice can be given to the Settlement
13 Class, as required by state and federal constitutional provisions and Rule 23, and so
14 the Class Administrator can verify membership in the Settlement Class and verify
15 claim eligibility, as necessary. The Court further finds and orders that compliance
16 with this Order by OCTA, TCA and/or Cofiroute will not and does not violate
17 California Streets & Highways Code section 31490 or any other federal, state or local
18 constitution, statute, rule, regulation or policy purporting to limit the disclosure of
19 personally identifiable information.

20 8. To effectuate this Order and to ensure adequate notice is provided to the
21 members of the Settlement Class, and in accordance with both the Court's general
22 authority to protect its jurisdiction and the All Writs Act (28 USC § 1651), the Court
23 hereby permanently enjoins each and every member of the Settlement Class from
24 filing or pursuing any claim or litigation against any of the persons and/or entities
25 listed below in subparagraphs 8(a) through (c) asserting that compliance with the
26 obligations imposed by this Order or the Agreement violates California Streets &
27 Highways Code section 31490 or any other federal, state or local constitution, statute,
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rule, regulation or policy purporting to limit the disclosure of personally identifiable information:

- a. OCTA, Cofiroute, and any and all other Released Parties (as defined in Section 2.26 of the Agreement);
- b. TCA and BRiC-TPS, LLC (“BRiC”), together with their respective officers, agents, employees and attorneys;
- c. Any other person or entity who provides information to the Class Administrator pursuant to this Order, together with their respective officers, agents, employees and attorneys.

9. The Class Administrator shall send the applicable Class Notice as provided by the Agreement via: (i) electronic mail, to the most recent email address of all persons in the Interoperability Subclass for whom TCA provides an email address; (ii) first class mail, to the most recent mailing address of all persons in the Interoperability Subclass for whom TCA had no reasonably available email address or whose email notice was returned as undeliverable and for whom TCA provides a mailing address, and all persons in the Debt Collection Subclass for whom OCTA or Cofiroute provides a mailing address; and (iii) via publication and social media advertisements for all other members of the Settlement Class. The Notice will advise the Settlement Class members of the opportunity to update their email address and/or mailing address with the Class Administrator.

10. The Class Administrator shall treat the records of Settlement Class members as confidential and shall not disclose all or any portion of those records to any person or entity except as authorized by Court order. The Class Administrator shall use the records containing Settlement Class member information solely for the purposes of providing notice to Settlement Class members, facilitating communication with them about the Settlement, administering and processing claims and exclusions including verifying claim forms, and calculating and paying settlement

1 awards. No copies of Settlement Class member information may be made, nor
2 utilized by the Class Administrator for any purpose not specified in this Order.

3 11. Settlement Website. By the Settlement Notice Date, the Class
4 Administrator will maintain and administer a dedicated Settlement Website
5 containing class information and related documents. At a minimum, such documents
6 will include the operative Corrected First Amended Consolidated Class Action
7 Complaint (ECF No. 119-1), the Agreement and attached exhibits, E-mail Notice,
8 Mail Notice, this Order, the Court's January 17, 2020 order on Defendants' Key
9 Questions Motion (ECF No. 566), all motions or other papers filed regarding final
10 settlement approval, attorney's fees, costs, and/or service awards for the Class
11 Representative, and the Final Approval Order. The Settlement Website will permit
12 members of the Settlement Class who elect to do so to register online to receive (a)
13 email notice that the Court has granted final approval of the Settlement, (b) updates
14 on the deadlines to submit Requests for Exclusion and make Objections, and (c) the
15 status of payments under the terms of the Settlement. The Settlement Website will be
16 taken down and rendered inaccessible by the Final Distribution Date.

17 12. Claims. All claims must be postmarked or submitted electronically
18 within **eighty-four (84) days after the Settlement Notice Date ("Claims Deadline")**
19 as specified by the Agreement. Any eligible Settlement Class member who does not
20 timely and properly submit a claim within the time provided for shall be forever
21 barred from sharing in the distribution of the proceeds of the Settlement, unless
22 otherwise agreed by the Parties or ordered by the Court, but will in all other respects
23 be subject to and bound by the provisions of this Order and upon final approval of the
24 Settlement by the provisions of the Agreement, the releases and covenant not to sue
25 contained therein, the Judgment, and the Final Approval Order.

26 13. The Class Administrator shall review and process each claim to
27 determine whether it qualifies for a Cash Award, and in what amount, in accordance
28 with the terms of the Agreement. Claims that do not meet the submission requirements

1 may be rejected. Prior to rejecting a claim, in whole or in part, the Class Administrator
2 shall communicate with the claimant in writing to give the claimant a reasonable
3 opportunity to remedy any deficiencies in the claim.

4 14. Exclusions from the Settlement. Members of the Settlement Class who
5 wish to exclude themselves from the Settlement Class must advise the Class
6 Administrator by providing a written Request for Exclusion. The Request for
7 Exclusion must be postmarked no later than **eighty-four (84) days after the**
8 **Settlement Notice Date** (the “Exclusion Deadline”). In it, the Settlement Class
9 member must state his or her full name and address and must state that he or she
10 wishes to be excluded from the Settlement. Any member of the Settlement Class who
11 submits a valid and timely Request for Exclusion will not be a Final Settlement Class
12 member and will not be bound by the terms of the Agreement (but will be bound by
13 the injunction in paragraph 8, above). All members of the Settlement Class who do
14 not submit a timely, valid Request for Exclusion, however, will be bound by this
15 Order, and upon final approval of the Settlement by the Agreement, including the
16 releases and covenant not to sue, the Final Approval Order and the Judgment.

17 15. Objections. Any Settlement Class member who intends to object to the
18 Settlement (“Objector”) must file a written objection with the Court, located at
19 350 W. 1st Street, Los Angeles California, 90012, Courtroom 5D, no later than **eighty-**
20 **four (84) days after the Settlement Notice Date** (the “Objection Deadline”). In the
21 written objection, the Objector must state his or her (1) full name and address; (2)
22 account number with OCTA, if one exists; and (3) any other proof of Settlement Class
23 membership if such proof exists (“Objection”). The written Objection must also state
24 the reasons for the Objector’s objection to the Settlement and indicate whether he or
25 she intends to appear at the hearing on the motion for final approval of the Settlement
26 (“Final Approval Motion”) before the Special Master on his or her own behalf or
27 through counsel. Any documents supporting the Objection must be attached to the
28 Objection. The Parties shall have the right to obtain document discovery from and

1 take the deposition of any Objector relevant to the Objection. Any Objector who
2 timely files an Objection and indicates an intent to appear may appear at the hearing
3 before the Special Master on the Final Approval Motion, either in person or through
4 an attorney hired at the Objector's own expense, to object to the fairness,
5 reasonableness, or adequacy of the Settlement.

6 16. Declaration of Class Administrator. No later than fourteen (14) calendar
7 days before the hearing before the Special Master on the Final Approval Motion, the
8 Class Administrator shall file with the Court and serve on counsel for all Parties a
9 declaration stating that the Notice required by this Order has been completed.

10 17. Motion for Final Approval. The Final Approval Motion shall be filed and
11 served **at least twenty-eight (28) days before the hearing on the Final Approval**
12 **Motion before the Special Master.** Any opposition papers in response to any
13 Objections shall be filed and served at least **fourteen (14) calendar days prior to the**
14 **hearing on the Final Approval Motion before the Special Master.**

15 18. Any motions for attorneys' fees and costs and service awards shall be
16 filed **at least two weeks before the Objection and Exclusion Deadlines.**

17 19. Defendants shall bear no responsibility for any application for attorneys'
18 fees and costs and service awards, and such matters will be considered separately from
19 the fairness, reasonableness, and adequacy of the Settlement. At or after the hearing
20 before the Special Master on the Final Approval Motion, the Special Master shall
21 make recommendations to the Court on any application for attorneys' fees and costs
22 to Class Counsel and any service award to the Class Representative.

23 20. All reasonable expenses incurred in accordance with the Agreement and
24 this Order in identifying and notifying Settlement Class members, as well as
25 administering the Settlement, shall be paid in accordance with the terms set forth in
26 the Agreement.

27 21. The Court preliminarily approves Section 15 of the Agreement in which
28 OCTA, Cofiroute, and any other Released Parties, and TCA, 3M Company, BRiC,

1 any other person or entity who provides information to the Class Administrator
2 pursuant to this Order, and any of their respective officers, agents, employees and
3 attorneys are released from any and all claims asserting that compliance with the
4 obligations of this Order, the Agreement, and/or the Court ordered Notice
5 requirements violates Section 31490 or any other federal, state or local constitution,
6 ordinance, statute, rule, regulation or policy purporting to limit the disclosure of the
7 personally identifiable information which is reasonably necessary to provide notice
8 to the Settlement Class and to otherwise implement the Settlement.

9 22. The Special Master, Hon. Andrew J. Guilford (ret.), shall hold a hearing
10 on the Final Approval Motion and on any motions for award of attorneys' fees and
11 costs and/or service award to the Class Representative on a date(s) selected by the
12 Special Master at Judicate West, to determine: (a) whether the Settlement on the terms
13 and conditions provided for in the Agreement is fair, reasonable and adequate to class
14 members and should be finally approved by the Court; (b) whether a judgment should
15 be entered pursuant to the Settlement; (c) whether Class Counsel should be awarded
16 attorneys' fees and costs, and if so, in what amount; and (d) whether a service award
17 should be awarded to the Class Representative, and if so, in what amount. The Special
18 Master may postpone the hearing on the Final Approval Motion and any motions for
19 attorneys' fees and service awards and will provide notice of any such postponement
20 to the Class Administrator who shall post such information to the Settlement Website
21 without the need for further or additional notice to the Settlement Class members. The
22 Special Master shall produce a Report and Recommendation as to whether the
23 Settlement should be approved as fair, reasonable and adequate under Rule 23(e) and
24 whether any motions for attorneys' fees or service awards should be granted and if so
25 in what amounts.

26 23. Neither the Agreement or any of its terms or provisions, nor any of the
27 negotiations or proceedings connected with the Settlement, whether or not
28 consummated, shall be construed as an admission or concession of any kind by any

1 of the Parties. Neither the Agreement or any of its terms or provisions, nor any of the
2 negotiations or proceedings connected with the Settlement, may be offered against
3 any of the Parties in this case or any other action or proceeding as evidence of, or
4 construed as or deemed to be evidence of, any presumption, concession or admission
5 by any of the Parties regarding any issue whatsoever including: (i) whether it was
6 appropriate for class certification; (ii) the validity of any allegation or claim or
7 element thereof that was, could have been or will be asserted against any of the
8 Defendants; (iii) liability, negligence, fault, or wrongdoing of any kind; and (iv) the
9 existence or scope of any damages.

10 24. The Court retains exclusive and continuing jurisdiction over the Parties
11 and the Settlement Class members to consider all further motions and applications
12 arising out of, or connected with this Order, the Agreement or related Settlement
13 matters. The Court may approve the Settlement with such modifications as may be
14 agreed to by the Parties, if appropriate, without further notice to the Settlement Class.
15 The Court also retains jurisdiction with respect to the implementation and
16 enforcement of this Order, the terms of the Agreement, and all Parties hereto submit
17 to the jurisdiction of the Court for purposes of implementing and enforcing the
18 Settlement embodied in the Agreement.

19 25. All Settlement Class members shall be bound by all determinations and
20 judgments of the Court in this case concerning the Settlement and related matters,
21 whether favorable or unfavorable to the Settlement Class.

22 26. All proceedings in this action relating to OCTA and Cofiroute shall be
23 stayed until further order of the Court, except for proceedings that may be necessary
24 to implement this Order, the Agreement, its Exhibits, or to comply with or effectuate
25 the terms and conditions of the Settlement.

26 27. Pending determination of the Final Approval Motion, neither Plaintiff
27 nor any Settlement Class member, directly or indirectly, representatively, or in any
28 other capacity, shall commence or prosecute against OCTA, Cofiroute or any of the

1 other Released Parties any action or proceeding in any court or tribunal asserting any
2 of the Released Claims; provided that this prohibition shall not apply to the following
3 claims, which were expressly carved out of the Settlement by the Parties:

- 4 - The claims expressly asserted in the January 6, 2020 First Amended
5 Complaint on file in the case entitled Mathew Skogebo et al., vs. Cofiroute
6 USA, LLC, et al., Orange County Superior Court Case No. 30-2019-
7 01118474;
- 8 - The claims expressly asserted in the January 13, 2020 Second Amended
9 Complaint on file in the case entitled Harvey J. Thompson, et al., vs.
10 Cofiroute USA, LLC, et al., Orange County Superior Court Case No. 30-
11 2019-01108804; and
- 12 - The claims expressly asserted in the January 3, 2020 Corrected First
13 Amended Complaint on file in the case entitled Sanket Vinod Thakur, et al.,
14 vs. Cofiroute USA, LLC, et al, United States District Court, Central District
15 of California, Case No. 8:19-CV-02233 ODW (JDEx).

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17 **IT IS SO ORDERED.**

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19 May 17, 2021

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22 **OTIS D. WRIGHT, II**
23 **UNITED STATES DISTRICT JUDGE**
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